

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD BRADDOCK,

Plaintiff,

v.

ZAYCON FOODS, LLC, a Washington limited liability company; FRANK R. MARESCA, JANE DOE MARESCA and the marital community composed thereof; MICHAEL GIUNTA, JANE DOE GIUNTA and the marital community composed thereof; MIKE CONRAD, JANE DOE CONRAD and the marital community composed thereof; and ADAM KREMIN, JANE DOE KREMIN and the marital community composed thereof,

Defendants.

NO. 2:16-cv-1756

**BRADDOCK'S FIRST AMENDED
COMPLAINT**

Plaintiff Richard Braddock ("Braddock"), by and through his attorneys, Trachtenberg Rodes & Friedberg LLP and Ryan, Swanson & Cleveland PLLC, as and for his Complaint herein, alleges as follows:

I. NATURE OF THE DISPUTE

1. This matter involves a systematic scheme, fueled by greed and self-interest and implemented through deception and manipulation, to extract money from plaintiff Braddock,



1 and to ride on his reputation, perpetrated by Washington company Zaycon Foods, LLC
 2 (“Zaycon” or the “Company”), Washington residents Michael Conrad and Adam Kremin and
 3 New York residents Michael Giunta and Frank Maresca (Maresca, Giunta, Conrad and Kremin
 4 are hereinafter referred to as the “Individual Defendants”).

5
 6 2. Zaycon is an innovative, early stage food distribution company that utilizes a
 7 “farm-to-customer” model. It was on the path to becoming a game changer in the grocery
 8 business before it was hijacked by the Individual Defendants.

9 3. Braddock is a member of Zaycon, its largest investor and its highly experienced
 10 former executive chairman, chief executive officer and co-managing Member.

11 4. Defendants deliberately defrauded Braddock and engaged in self-interested
 12 abuses of authority. They breached their obligations to Braddock under federal and state
 13 securities and common law anti-fraud laws, as well as their fiduciary duties of loyalty, care and
 14 disclosure, and their contract-based duties of good faith and fair dealing.
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16 5. As detailed below, Defendants:

- 17 • induced Braddock to invest in Zaycon based on misrepresentations and
 18 omissions concerning, among other things, its capitalization and
 19 prospects for raising additional capital;
- 20 • failed to inform Braddock before he invested of the true ownership of
 21 the Company;
- 22 • failed to inform Braddock before he invested of the leadership vacuum
 23 which would and did force him to become the executive chairman and
 24 chief executive officer and a managing member of the Company to keep
 25 it afloat;
- 26 • failed to inform Braddock, prior to each investment he made, of facts
 (including but not limited to certain Individual Defendants being subject
 to regulatory sanctions, being associated with a failed venture, and
 having previously filed for bankruptcy) that rendered Defendants’

1 representations and other statements (including but not limited to the
2 Company's valuation and ability to gain access to needed capital) false
3 and misleading in the context in which they were made;

- 4 • issued units to one another for little or no consideration;
- 5 • consistently failed to provide Braddock with an accurate cap chart;
- 6 • took advantage of Braddock's leadership and marketing expertise to
7 bring about a 51% increase in revenue;
- 8 • took advantage of the fact that Braddock was forced to provide
9 additional and unanticipated financing multiple times to stave off the
10 Company's insolvency, which he did single handedly;
- 11 • took advantage of Braddock's reputation and experience to create new
12 and real opportunities to raise private equity capital, which Braddock
13 did;
- 14 • prevented Braddock from exercising his contractual right to convert debt
15 to equity and his contractual options to acquire additional Zaycon units;
- 16 • failed to implement an agreed upon amendment to the Second Amended
17 and Restated Operating Agreement which would have given voting
18 rights to the holders of B units in the Company, which in turn would
19 have increased Braddock's percentage of the voting units in the
20 Company and decreased Defendants' percentage;
- 21 • failed to implement an agreed upon Third Amended Operating
22 Agreement which would have given voting rights to the holders of B
23 units in the Company;
- 24 • withheld a draft of the Third Amended Operating Agreement from
25 Braddock even though he was a co-managing member of the Company;
- 26 • withheld data from Braddock reflecting the fact that his ownership of the
Company on a fully diluted basis exceeded 20%;
- although Braddock was a co-managing member and thus certainly
entitled to full disclosure, responded through Giunta and with the
concurrence of Braddock's co-managing member Maresca to
Braddock's requests made days before his removal from management
for the latest version of the operating agreement and an accurate version
of the capitalization chart by covering up the fact that new versions of



these documents had been completed and were available and by sending Braddock prior versions of the documents;

- conspired to removed Braddock from management in violation of the operating agreement and other understandings, including the agreement to convert all equity in Zaycon to voting equity, the agreements allowing Braddock to convert debt to equity and the agreements allowing Braddock to acquire additional Zaycon units, all in violation of his rights as a member and a managing member and all without proper notice; and
- removed Braddock from his position as a managing member based upon the vote of less than the required 80% of the units entitled to vote in accordance with the Company's operating agreement by counting non-voting units as if they were voting units, including but not limited to units owned by a trust set up by the family of Defendant Giunta.

6. As a result, Braddock seeks a) declaratory relief stating that his removal as a managing member of the Company and his removal as CEO were wrongful and of no force or effect and that actions taken by Zaycon's purported management since that time have been *ultra vires*; b) declaratory relief stating that some or all of the Zaycon membership units issued to the individual defendants for no consideration are void; c) injunctive relief reinstating Braddock as a managing member of the Company and as CEO; d) injunctive relief prohibiting the Company from taking any steps to recapitalize the Company until such time as Braddock has been reinstated as a managing member of the Company; and (e) damages in an amount to be established at trial in excess of \$6.5 million.

II. PARTIES

7. Plaintiff Richard Braddock is a resident of New York, New York.

8. Defendant Zaycon Foods, LLC is a Washington limited liability company with its principal place of business at 16201 E. Indiana Avenue, Suite 2150, Spokane, Washington.

9. Defendants Mike Conrad and Jane Doe Conrad are husband and wife and



1 comprise a marital community. All of the acts of Mike Conrad were for the benefit of the
2 Conrads and their marital community. Mike Conrad is a member and a former managing
3 member of Zaycon. The Conrads reside at 2608 South Viewmont Drive Green Acres,
4 Washington. The Conrads and their marital community shall collectively be referred to as
5 “Conrad.”
6

7 10. Defendants Frank R. Maresca and Jane Doe Maresca are husband and wife and
8 comprise a marital community. All of the acts of Frank R. Maresca were for the benefit of the
9 Marescas and their marital community. Frank R. Maresca is a member and the managing
10 member of Zaycon. The Marescas reside at 186 N. Manhattan Avenue, Massapequa, New York.
11 The Marescas and their marital community shall collectively be referred to as “Maresca.”
12

13 11. Defendants Michael Giunta and Jane Doe Giunta are husband and wife and
14 comprise a marital community. All of the acts of Michael Giunta were for the benefit of the
15 Giuntas and their marital community. Michael Giunta is a member and a former managing
16 member of Zaycon. The Giuntas reside at 5 Sterling Lane, Sands Point, New York. The Giuntas
17 and their marital community shall collectively be referred to as “Giunta.”
18

19 12. Defendants Adam Kremin and Jane Doe Kremin are husband and wife and
20 comprise a marital community. All of the acts of Adam Kremin were for the benefit of the
21 Kremins and their marital community. Adam Kremin is a member of Zaycon. The Kremins
22 reside at 23815 East Trent Avenue, Newman Lake, Washington. The Kremins and their marital
23 community shall collectively be referred to as “Kremin.”
24

25 III. JURISDICTION

26 13. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a)

1 of the Securities Exchange Act of 1934 (the “Securities Exchange Act”), 15 U.S.C. §§ 78j(b)
 2 and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

3 14. This Court has jurisdiction over the subject matter of this action pursuant to 28
 4 U.S.C. § 1331, Section 27 of the Securities Exchange Act and 28 U.S.C. § 1367(a).

6 IV. VENUE

7 15. Venue is proper in this District pursuant to an agreement between the parties and
 8 Section 27 of the Securities Exchange Act and 28 U.S.C. § 1391(b). The Company is
 9 incorporated and headquartered in Washington State, and many of the acts charged herein,
 10 including the preparation and dissemination of materially false and misleading information,
 11 occurred in substantial part in the State of Washington.

12 16. In connection with the acts alleged in this Complaint, Defendants, directly or
 13 indirectly, used the means and instrumentalities of interstate commerce, including, but not
 14 limited to, the mails and interstate telephone communications.

16 V. FACTUAL BACKGROUND

17 *Braddock*

18 17. Braddock is the former president and chief operating officer of Citicorp and its
 19 principal subsidiary, Citibank, N.A.; former chairman and chief executive officer of
 20 Priceline.com, which he had joined during its startup phase, which he had taken public and
 21 which now has a market capitalization in excess of \$70 billion; former chief executive officer
 22 of Medco Containment Services, Inc., the largest prescription drug services company, until its
 23 acquisition by Merck & Co., Inc. in November 1993 for \$6 billion; former chairman and CEO
 24 of FreshDirect, a successful online grocer; former principal of Clayton, Dubilier & Rice, Inc., a
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1 private equity firm; former chairman of True North Communications Inc.; former chairman of
2 MidOcean Partners, a private investment fund; and a former director of Marriott International,
3 Inc., Cadbury, PLC, Citibank, N.A., Lotus software and several privately held companies.

4 ***Conrad's and Kremin's Prior and Undisclosed Violations of the Securities Laws***

5
6 18. During or about 2009, the Securities Division of the State of Washington's
7 Department of Financial Institutions ("DFI") commenced an investigation of Conrad and
8 Kremin for their promotion and sale of shares in a company by the name of IFT Holdings, Inc.,
9 f/k/a Integrated Fuel Technologies, Inc. ("IFT").

10 19. Initially, IFT's business centered on a fuel additive delivery system known as a
11 "fuel doser." Later, IFT focused on the development of a catalyst that removes nitrogen oxides
12 from diesel engine emissions.

13
14 20. On or about November 24, 2009, DFI filed a Statement of Charges and Notice
15 of Intent to Enter Order to Cease and Desist, to Impose Fines and to Recover Costs against
16 Conrad and Kremin for their promotion and sale of shares in IFT.

17 21. DFI alleged *inter alia* that: (i) Conrad and Kremin violated RCW 21.20.140,
18 through their offer and/or sale of securities for which there was no registration on file with the
19 Washington State Securities division of DFI; (ii) Conrad and Kremin violated RCW 21.20.040
20 by offering or selling said securities while not registered as a salesperson or broker-dealer in the
21 State of Washington; and (iii) Conrad and Kremin made misstatements of material fact, or
22 omitted to state material facts necessary in order to make the statements made, in light of the
23 circumstances under which they were made, not misleading in violation of RCW 21.20.010.

24
25 22. Conrad failed to request an administrative hearing on the charges. Kremin
26

1 waived the right to a hearing and submitted a written statement in lieu of a hearing.

2 23. After considering the written statement and reviewing the investigative record,
3 the Securities Administrator found no material grounds for amending the Statement of Charges
4 against Kremin and adopted as final the findings of fact and conclusions of law set forth in the
5 Statement of Charges.
6

7 24. On or about January 26, 2010, DFI filed its Entry of Findings of Fact and
8 Conclusion of Law and Final Order to Cease and Desist as to Kremin.

9 25. On or about January 27, 2010, DFI filed its Entry of Findings of Fact and
10 Conclusions of Law and Final Order to Cease and Desist as to Conrad.

11 26. The Final Orders required Conrad and Kremin to (i) cease and desist from
12 offering or selling securities in violation of RCW 21.20.140, the securities registration section
13 of the Securities Act of Washington; (ii) cease and desist from acting as unregistered securities
14 broker-dealers or salespersons in violation of RCW 21.20.040, the broker-dealer and securities
15 salesperson registration section of the Securities Act of Washington; and (iii) cease and desist
16 from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.
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18 27. In addition, Conrad was fined \$10,000 by the DFI for his violations of the
19 securities laws.
20

21 28. At all material times, Defendants failed to disclose to Braddock and others the
22 facts respecting the DFI investigation and Conrad's and Kremin's prior violations of the
23 securities laws.

24 ***Conrad's Bankruptcy***

25 29. On April 22, 2010, Conrad filed a petition for bankruptcy protection in the
26

1 Eastern District of Washington, Case No. 10-02447-FPC7.

2 30. A significant portion of the creditors listed on Conrad's petition were IFT
3 shareholders who had been defrauded by Conrad's IFT scheme.

4 31. On or about May 12, 2010, Conrad filed Schedule F to his bankruptcy petition,
5 which identified Adam Kremin, JC Conrad and Frank Maresca – all of whom would become
6 associated with Zaycon – as Creditors Holding Unsecured Nonpriority Claims in the Conrad
7 bankruptcy.

8 32. Kremin is listed as a creditor due to his purported investment in IFT.

9 33. JC Conrad is listed as an unsecured nonpriority creditor for a "personal loan" and
10 as an investor in IFT.
11

12 34. Maresca is listed as an unsecured nonpriority creditor.

13 35. At all material times, Defendants failed to disclose to Braddock and others the
14 facts respecting the Conrad bankruptcy.
15

16 ***Zaycon***

17 36. Zaycon was founded on January 9, 2010, by the filing of a Certificate of
18 Formation with the Washington Secretary of State.

19 37. The Zaycon business model provides for food items to be shipped directly from
20 the farm to the consumer, thus bypassing the normal maze of wholesalers, distributors and other
21 intermediaries. Zaycon sources its products directly from the farm in bulk purchases.
22 Refrigerated trucks pick up the goods at the farm and deliver them directly to the consumer at
23 predetermined central locations. By allowing consumers to buy directly, Zaycon affords them
24 the opportunity to get fresher products, superior quality and lower cost. Similarly, by eliminating
25
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1 warehousing, Zaycon can offer consumers cost savings of up to 50%.

2 38. The Zaycon model had the prospect to revolutionize the grocery market.

3 39. However, by mid-2014 the Company was floundering as it was short on capital
4 and experienced leadership.

5
6 ***Braddock Invests in Zaycon***

7 40. In mid-2014, based on the breadth of Braddock's experience and his willingness
8 to invest in start-up ventures, Defendants sought out Braddock and solicited his investment in
9 Zaycon.

10 41. Defendants thereupon made a series of fraudulent, reckless and/or negligent
11 misrepresentations and omissions to Braddock.

12 ***Material Misrepresentations Made in the Operating Agreement***

13 42. Certain of the fraudulent, reckless and/or negligent misrepresentations were
14 contained in the Second Amended and Restated Operating Agreement of Zaycon Foods dated
15 November 1, 2012 (the "Operating Agreement"), a copy of which, as amended, was provided
16 to Braddock during or about the summer of 2014.

17 43. The Operating Agreement falsely stated that the number of Class A Units which
18 had been issued to Mike Conrad was 1,375,000 when he in fact owned 3,250,000 Class A Units.

19 44. The Operating Agreement falsely stated that the number of Class A units which
20 had been issued to Adam Kremin was 1,375,000 when in fact he owned 2,750,000 Class A
21 Units.
22

23 45. The Operating Agreement falsely stated that the number of Class A Units which
24 had been issued to Frank Maresca was 750,000 when in fact he owned 2,225,000 Class A Units.
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1 46. The Operating Agreement falsely stated that the total number of Class A Units
2 which had been issued to Zaycon members was 5,500,000 when in fact it was at least
3 10,225,000.

4
5 ***Material Misrepresentations Made During the June and July, 2014 Meetings***

6 47. Certain of the fraudulent, reckless and/or negligent misrepresentations were
7 made during meetings between Braddock and Maresca and Giunta which took place in
8 Braddock's office in New York City. The first of these meetings took place during or about
9 early June, 2014. The second took place on June 13, 2014. The third took place on July 10,
10 2014 (the "June and July, 2014 Meetings").

11 48. The misrepresentations made by Maresca and Giunta at the June and July, 2014
12 Meetings were made on behalf of themselves and Zaycon and the other Individual Defendants.

13 49. During these meetings Maresca and Giunta falsely stated that Zaycon, under the
14 leadership of CEO Conrad and with the support of Kremin, was close to raising money from
15 other prospective investors at a \$38 million valuation level. In fact, Maresca and Giunta knew
16 that Zaycon was not close to raising money from other investors at a \$38 million valuation level.

17 50. During these meetings Maresca and Giunta falsely stated that Giunta had recently
18 invested in Zaycon at a \$25 million valuation level. In fact, Maresca and Giunta knew that
19 Giunta had recently invested at a much lower valuation level resulting in his receipt of far more
20 shares than implied by this false statement.

21 51. During these meetings Maresca and Giunta falsely stated that if Braddock
22 invested quickly he would be given the opportunity to invest at a discount relative to the other
23 prospective investors with whom Zaycon was in serious discussions. In fact, Maresca and
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1 Giunta knew that there were no such other investors with whom Zaycon was in serious
2 discussions.

3 52. During these meetings Maresca and Giunta falsely stated that if Braddock
4 invested quickly he would be given the opportunity to invest at the same valuation level as the
5 level at which Giunta had invested. In fact, Maresca and Giunta had no intention of allowing
6 Braddock to invest at this valuation level.

7 53. During these meetings Maresca and Giunta falsely stated that an accurate
8 capitalization chart was in the process of being prepared and that it would be provided to
9 Braddock as soon as it was ready. In fact, Maresca and Giunta had no intention of providing
10 Braddock with an accurate capitalization chart as it would have revealed the true capitalization
11 structure of the Company.
12

13
14 ***Material Misrepresentations Made By Email In June 2014***

15 54. Certain of these fraudulent, reckless and/or negligent misrepresentations were
16 contained in a June 6, 2014 email from Maresca to Braddock (the “June 6, 2014 Email”).

17 55. The June 6, 2014 Email was copied to Giunta.

18 56. The misrepresentations contained in the June 6, 2014 Email were made by
19 Maresca on behalf of Zaycon and Giunta and the other Individual Defendants.

20 57. The June 6, 2014 Email reiterated the false representation made during the June
21 and July 2014 Meetings that Zaycon was attempting to raise money from other prospective
22 investors at a \$38 million valuation level. In particular, the June 6, 2014 Email falsely stated
23 that the “current offer” made to other investors was an offer to invest at a valuation level of “38
24 million” dollars. In fact, Defendants knew that there were no such other investors with whom
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1 Zaycon was in serious discussions about an investment at a valuation level of \$38 million.

2 58. The June 6, 2014 Email falsely stated that Zaycon stock was trading at \$2.25 per
3 share and that Defendants were trying to close their deal at 25 million shares, meaning that the
4 Company's additional value could be in excess of \$50 million. In fact, Defendants knew that
5 the stock of Zaycon was not trading at \$2.25 per share.
6

7 59. The June 6, 2014 Email falsely stated that Braddock would be given the
8 opportunity to invest at a valuation level of \$25 million and that this meant that Braddock could
9 receive a premium relative to the other investors with whom Zaycon was in discussion. In fact,
10 Defendants knew that if Braddock invested at this valuation level Braddock would not be
11 receiving a premium relative to other investors.
12

13 ***Material Omissions Made During the June and July, 2014 Meetings and in the June 6, 2014 Email***

14 60. During the June and July, 2014 Meetings and in the June 6, 2014 Email Maresca
15 and Giunta failed to disclose that Giunta had invested \$1,000,000 in Zaycon during November
16 2013 at a valuation level of approximately \$6 million.
17

18 61. During these meetings and in this email Maresca and Giunta failed to disclose
19 that Zaycon had given Giunta an option to invest another \$1,000,000 in Zaycon between
20 December 1, 2013 and November 30, 2014 at a \$3 million valuation level.

21 62. During these meetings and in this email Maresca and Giunta failed to disclose
22 that Zaycon had given Giunta an option to invest another \$1,000,000 in Zaycon between
23 December 1, 2014 and November 30, 2015 at a \$4 million valuation level.
24

25 63. During these meetings and in this email Maresca and Giunta failed to disclose
26 that Zaycon had issued a pair of \$250,000 convertible notes to Giunta during late April 2014

1 and that these instruments gave Giunta the right to convert his debt into equity at a valuation
2 level of \$3 million.

3 64. During these meetings and in this email Maresca and Giunta failed to disclose
4 that Zaycon had given Zaycon Food Food Holding and Acquisition Corp. (“Zaycon Holding”),
5 which Maresca and Giunta owned jointly, the right to convert debt into equity at a price of \$0.25
6 per unit, a price that would be substantially dilutive to Plaintiff.

7 65. Maresca’s and Giunta’s non-disclosures respecting the pricing and valuation
8 levels provided to Zaycon insiders rendered their representations that Zaycon was close to
9 raising money from other prospective investors at a \$38 million valuation level false and
10 misleading.
11

12 66. Maresca’s and Giunta’s non-disclosures respecting the pricing and valuation
13 levels provided to Zaycon insiders rendered their representations that Giunta had recently
14 invested in Zaycon at a \$25 million valuation level false and misleading.
15

16 67. Maresca’s and Giunta’s non-disclosures respecting the pricing and valuation
17 levels provided to Zaycon insiders rendered their representations that Braddock would be given
18 the opportunity to invest at the same valuation level as the level at which Giunta had invested
19 false and misleading.
20

21 68. Maresca’s and Giunta’s non-disclosures respecting the pricing and valuation
22 levels provided to Zaycon insiders rendered their representations that an accurate capitalization
23 chart was in the process of being prepared and that it would be provided to Braddock as soon as
24 it was ready false and misleading.

25 69. During these meetings and in this email Maresca and Giunta failed to disclose
26

1 that the DFI had initiated an action against Conrad in 2009.

2 70. During these meetings and in this email Maresca and Giunta failed to disclose
3 that the DFI had issued a Cease and Desist Order as to Conrad in January 2010.

4 71. During these meetings and in this email Maresca and Giunta failed to disclose
5 that the DFI had initiated an action against Kremin in 2009.

6 72. During these meetings and in this email Maresca and Giunta failed to disclose
7 that the DFI had issued a Cease and Desist Order as to Kremin in January 2010.

8 73. During these meetings and in this email Maresca and Giunta failed to disclose
9 that Conrad had filed for personal bankruptcy in 2010.

10 74. Investors are wary of investing in companies being run by individuals who have
11 been ordered to cease and desist from violating the anti-fraud provisions of the securities laws.

12 75. Investors are wary of investing in companies being run by individuals who have
13 filed for personal bankruptcy.

14 76. Accordingly, Maresca's and Giunta's non-disclosures respecting the DFI
15 proceedings against Conrad and Kremin and respecting Conrad's bankruptcy rendered their
16 representations that Zaycon was close to raising money from other prospective investors at a
17 \$38 million valuation level false and misleading.

18 77. During these meetings and in this email Maresca and Giunta failed to disclose
19 that Conrad had been given his interest in the Company for little or no consideration.

20 78. During these meetings and in this email Maresca and Giunta failed to disclose
21 that Kremin had been given his interest in the Company for little or no consideration.

22 79. During these meetings and in this email Maresca and Giunta failed to disclose
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1 that Maresca had been given his interest in the Company for little or no consideration.

2 80. Investors regard whether founders have invested in their companies as highly
3 material.

4 81. Accordingly, Maresca's and Giunta's non-disclosures respecting the fact that
5 Conrad, Kremin and Maresca had been given their interests in the Company for little or no
6 consideration rendered their representations that Zaycon was close to raising money from other
7 prospective investors at a \$38 million valuation level false and misleading.

8 82. All of the misrepresentations and omissions referenced above were material and
9 made with intent to defraud.

10 83. All of the misrepresentations and omissions referenced above were made to
11 induce Braddock to invest in Zaycon.

12 84. Zaycon is a manager-managed Washington limited liability company.

13 85. Conrad became the Manager of Zaycon on or before July 16, 2013.

14 86. All of the misrepresentations and omissions set forth above were made while
15 Conrad was the Manager of Zaycon.

16 87. Conrad, Kremin and Maresca were founders and control persons of Zaycon.

17 88. Giunta was a control person of Zaycon.

18 89. All of the misrepresentations and omissions set forth above were made with the
19 authorization and approval of Conrad, Kremin, Maresca and Giunta.

20 90. Articles 2 and 4 of the Operating Agreement assigned to Zaycon's Managing
21 Member(s) the authority to act on behalf of Zaycon in connection with the sale of securities to
22 Braddock.

1 91. As the Manager of Zaycon, Conrad had ultimate authority over the
2 misrepresentations and omissions made by Zaycon and the other Individual Defendants and
3 Conrad was a seller of the securities sold to Braddock.

4 92. Conrad signed several of the documents pursuant to which Braddock invested in
5 the securities of Zaycon in reliance on the misrepresentations and omissions of the Defendants,
6 including the Operating Agreement, Braddock's Membership Unit Purchase Agreements of
7 August 21, 2014, December 15, 2014, and September 18, 2015, and the Convertible Promissory
8 Notes of February 3, 2015, May 13, 2015 and June 16, 2015. All of these documents were
9 signed by Conrad in his capacity as the Manager of Zaycon.
10

11 93. The misrepresentations and omissions of Zaycon and the Individual Defendants
12 were the prevalent factor in inducing the sale of securities to Braddock because, among other
13 things, they caused Braddock to believe that the Company would have access to institutional
14 capital, had strong and capable management, and had a valuation of at least \$38 million, and
15 such misrepresentations and omissions had the most significant effect in connection therewith.
16

17 94. There were no intervening causes that disrupted the continuous and active effect
18 of Defendants' wrongful misrepresentations and omissions up to the time of each and every sale
19 of Zaycon securities to Braddock, and the harm thereof was not created by other forces for which
20 the Defendants and each of them were not responsible.
21

22 95. No meaningful lapse of time occurred between Defendants' wrongful
23 misrepresentations and omissions and each of Braddock's purchases of Zaycon securities, and
24 Braddock reasonably relied on Defendants' wrongful misrepresentations and omissions.

25 96. Each of the Individual Defendants directly or indirectly controlled Zaycon in
26

1 connection with the sale of securities to Braddock, and materially aided in such transactions by
2 signing documents, making materially misleading statements and omissions, meeting with
3 Braddock, inducing Braddock to invest in Zaycon, and otherwise effecting a fraud on Braddock.

4
5 97. All Defendants' wrongful misrepresentations and omissions were in furtherance
6 of the fraudulent sale of securities to Braddock.

7 98. As founders and control persons of Zaycon, each of the Individual Defendants
8 had ultimate authority over the misrepresentations and omissions made by Zaycon and the other
9 Individual Defendants and each of the Individual Defendants was a seller of and a contributive
10 factor in connection with the sale of the securities sold to Braddock.

11 99. On or about August 21, 2014, Braddock invested \$1 million dollars in Zaycon
12 and received a) 1,420,987 Class A membership units in Zaycon; and b) an option to purchase
13 947,325 additional Class A membership units in Zaycon exercisable until December 31, 2025.

14
15 100. Class A membership units in Zaycon are voting units.

16 101. From this point onward, the Individual Defendants owed fiduciary duties of care,
17 loyalty and full disclosure to Braddock.

18 102. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
19 acting on behalf of themselves and Zaycon, repeatedly reassured Braddock that an accurate
20 capitalization chart was in the process of being prepared and that it would be provided to
21 Braddock as soon as it was ready.

22
23 103. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
24 acting on behalf of themselves and Zaycon, continued to fail to disclose the truth respecting the
25 valuation levels at which Giunta had invested and at which Giunta had the right to convert debt
26

1 into equity in Zaycon.

2 104. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
3 acting on behalf of themselves and Zaycon, continued to fail to disclose the truth respecting the
4 price level at which Zaycon Acquisition had the right to convert debt into equity in Zaycon.
5

6 105. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
7 acting on behalf of themselves and Zaycon, continued to fail to disclose the truth respecting the
8 DFI proceedings against Conrad and Kremin and respecting Conrad's bankruptcy.

9 106. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
10 acting on behalf of themselves and Zaycon, continued to fail to disclose the truth respecting the
11 fact that Conrad, Kremin and Maresca had been given their interests in the Company for little
12 or no consideration.
13

14 107. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
15 acting on behalf of themselves and Zaycon, failed to disclose to Braddock that Conrad owned
16 more Zaycon units than the number set forth in Zaycon's operating agreement.

17 108. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
18 acting on behalf of themselves and Zaycon, failed to disclose to Braddock that Kremin owned
19 more Zaycon units than the number set forth in Zaycon's operating agreement.
20

21 109. During the late summer and fall of 2014, Conrad, Kremin, Maresca and Giunta,
22 acting on behalf of themselves and Zaycon, failed to disclose to Braddock that Maresca owned
23 more Zaycon units than the number set forth in Zaycon's operating agreement.

24 110. The Individual Defendants' non-disclosures respecting the extent of their Zaycon
25 holdings was part of a pattern of deception that included the false representation that an accurate
26

1 capitalization chart would be provided to Braddock.

2 111. The Individual Defendants' non-disclosures respecting the extent of their Zaycon
3 holdings rendered their representations that it was their intention to provide Braddock with an
4 accurate capitalization chart and that an accurate capitalization chart was in the process of being
5 prepared and that it would be provided to Braddock as soon as it was ready false and misleading.
6

7 112. On or about December 15, 2014, Braddock invested an additional \$500,000 in
8 Zaycon and received 394,741 Class B membership units in Zaycon and an option to purchase
9 476,190 additional Class B membership units in Zaycon exercisable until December 31, 2024.

10 113. Class B membership units in Zaycon are non-voting units.

11 114. On or about September 18, 2015, Braddock invested an additional \$450,000 in
12 Zaycon and received 478,723 Class A Units in Zaycon.
13

14 115. On or about February 3, 2015, Braddock loaned \$500,000 to Zaycon and
15 received a convertible promissory note entitling him to convert all sums owed under the note in
16 exchange for 396,825 Class A Units in Zaycon, plus additional Class A Units in Zaycon on
17 account of accrued interest, exercisable until December 31, 2016.

18 116. On or about May 13, 2015, Braddock loaned \$252,739.73 to Zaycon and received
19 a convertible promissory note entitling him to convert all sums owed under the note in exchange
20 for 221,702 Class A Units in Zaycon, exercisable until December 31, 2016.
21

22 117. On or about June 16, 2015, Braddock loaned \$500,000 to Zaycon and received a
23 convertible promissory note entitling him to convert all sums owed under the note in exchange
24 for 434,783 Class A Units in Zaycon, plus additional Class A Units in Zaycon on account of
25 accrued interest, exercisable until June 16, 2025.
26



1 118. On or about September 24, 2015, Braddock loaned \$450,000 to Zaycon and
2 received a convertible promissory note entitling him to convert all sums owed under the note in
3 exchange for 489,130 Class A Units in Zaycon, plus additional Class A Units in Zaycon on
4 account of accrued interest, exercisable until September 24, 2025.

5
6 119. On or about December 16, 2015, Braddock loaned \$200,000 to Zaycon and
7 received a convertible promissory note entitling him to convert all sums owed under the note in
8 exchange for 232,002 Class A Units in Zaycon, plus additional Class A Units in Zaycon on
9 account of accrued interest, exercisable until December 16, 2016.

10 120. On or about January 4, 2016, Braddock loaned \$300,000 to Zaycon and received
11 a convertible promissory note entitling him to convert all sums owed under the note in exchange
12 for 359,411 Class A Units in Zaycon, plus additional Class A Units in Zaycon on account of
13 accrued interest, exercisable until January 4, 2017.

14
15 121. On or about July 8, 2015, Braddock exercised his conversion option under his
16 February 3, 2015, \$500,000 convertible promissory note and received 409,959 additional Class
17 A membership units in Zaycon.

18 122. In sum, from August 2014 through January 2016, Braddock invested \$2,450,000
19 in Zaycon and provided over \$1,702,000 of convertible debt to Zaycon.

20 123. This made Braddock Zaycon's largest investor by far.

21
22 124. All of Braddock's investments and loans were made in reliance on
23 representations made in the Operating Agreement and during the June and July, 2014 Meetings
24 and in the June 6, 2014 Email and in reliance on misrepresentations and omissions made by
25 Maresca, Giunta, Conrad and Kremin, each of whom was acting on behalf of himself and
26

1 Zaycon and the other Individual Defendants.

2 125. Braddock would not have made his investments and loans in the absence of
3 Defendants' misrepresentations and omissions.

4 ***Braddock Takes a More Active Role in Zaycon***

5 126. By late September 2015, Braddock began to realize that a number of
6 representations made to him by Maresca, Giunta, Conrad and Kremin, in their individual
7 capacities and on behalf of Zaycon, about the financial and operational strength of Zaycon, had
8 been untrue.

9 127. Among other things, by this point in time Braddock had learned from a third
10 party about the DFI proceedings against Conrad and Kremin and that Conrad and Kremin had
11 been ordered to cease and desist from violating the anti-fraud provisions of the securities laws.
12 Braddock had never been told about the DFI proceedings or about the cease and desist orders
13 by any of the Defendants.

14 128. This gave rise to a leadership vacuum as the Company could not attract
15 investment capital so long as Conrad was the managing member and CEO of the Company.

16 129. As a result, Maresca, Giunta, Kremin and eventually Conrad himself all agreed
17 that Conrad had to step down as managing member and CEO.

18 130. In addition, each of the Individual Defendants asked Braddock to step in to take
19 a more active role in the Company.

20 131. Braddock agreed to do so and agreed to serve as co-managing member with
21 Maresca.

22 132. The parties thereupon agreed that the operating agreement of the Company
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1 would be amended to provide for two managers, that the managers would be Maresca and
2 Braddock, and that each manager would serve “until his or her death, disability, resignation or
3 removal by Members holding at least eighty percent (80%) of the Class A Units”.

4 133. The operating agreement was so amended and Braddock thereupon became a
5 co-managing member of Zaycon.
6

7 134. The other co-managing member of Zaycon during Braddock’s tenure was
8 Defendant Maresca.

9 135. On or about October 1, 2015, Braddock also became Zaycon’s chief executive
10 officer pursuant to a written agreement promising him, in lieu of salary, the issuance of 250,000
11 additional Class A membership units in Zaycon for each year of the agreement’s three year term,
12 with the first 250,000 units issued to him upon execution thereof.
13

14 136. Under Braddock’s leadership, and with the benefit of the capital infusions
15 received from Braddock, Zaycon’s revenues grew from \$16 million in 2014 to \$25 million in
16 2015, with 2016 revenues projected at \$73 million.

17 137. By mid-January 2016, Braddock owned 3,184,669 Class A and 394,741 Class B
18 membership units in the Company. In addition, he had the option and the means to purchase
19 947,325 additional Class A and 476,190 Class B membership units in the Company. He also
20 had the right to convert the Company’s indebtedness to him into up to 1,528,226 additional
21 Class A membership units in the Company, as well as to receive certain additional Class A
22 conversion units on account of accrued interest.
23

24 ***Zaycon Seeks Additional Investments***

25 138. Once Braddock had put Zaycon on firm footing, the Company determined that
26

1 the time was right to seek either additional investment or the sale of the Company.

2 139. During or about late 2015 or early 2016, Zaycon retained Vertical Group
3 (“Vertical”) to provide investment banking services to the Company. Michael Shwartz
4 (“Shwartz”) was the Vertical investment banker assigned to the engagement.
5

6 140. During or about January 2016, Vertical and Shwartz prepared an investor
7 presentation for Zaycon featuring Braddock as its CEO and Chairman of the Board and
8 highlighting his unique background and qualifications.

9 141. Vertical’s investor presentation referred to Braddock as the “seasoned” leader of
10 Zaycon’s management team, described him as an “experienced CEO in the e-commerce and
11 food industries” and touted both his directly relevant experience as the former chairman and
12 CEO of Priceline.com and FreshDirect and his more general high level experience in business
13 and finance, including that gained as the former president and COO of Citicorp and Citibank,
14
15 N.A.

16 142. In addition, the Vertical investor presentation noted that Zaycon’s year to year
17 sales growth during the years 2014 to 2016 (the years of Braddock’s involvement) were 20.9%,
18 50.9% and 193.6% (projected), respectively.

19 143. On or about April 14, 2016, a private equity firm based in Boston, Massachusetts
20 by the name of Great Hill Partners (“Great Hill”) submitted a proposal to make an investment
21 of \$25 million to buy into Zaycon at a pre-money enterprise valuation of \$30 million.
22

23 144. The Great Hill proposal contemplated that \$10 million would be used to buy
24 equity from existing members of Zaycon and that \$15 million would be invested directly into
25 the Company.
26

1 145. Braddock advised Defendants and Vertical and Shwarts that he believed that the
2 Great Hill deal could be improved through negotiation but that he was strongly in favor of
3 coming to terms with Great Hill.

4 146. Braddock further advised Defendants that he regarded the Great Hill proposal as
5 being more favorable than another proposal the Company had received.
6

7 147. The Great Hill proposal contemplated that Great Hill would acquire 56.5% of
8 Zaycon's fully diluted equity.

9 148. This meant that the equity of all existing members of Zaycon would be diluted.

10 149. In addition, the Great Hill proposal required Zaycon to be debt-free at the closing
11 of Great Hill's investment.

12 150. This meant that Braddock would be required to convert all of his remaining debt
13 to equity.
14

15 151. Despite the Individual Defendants' later false assertions that Braddock was
16 opposed to the deal with Great Hill, Braddock promptly and enthusiastically agreed that all of
17 his convertible debt would be converted to equity.

18 152. As a result, Braddock instructed Giunta, who was then Zaycon's CFO, to convert
19 all of Braddock's debt to equity.
20

21 153. In addition, Braddock asked to see the latest version of the operating agreement
22 and an accurate version of the capitalization chart.

23 154. Giunta thereupon falsely promised and undertook to provide Braddock with an
24 accurate capitalization chart and the other paperwork necessary to enable Braddock to effectuate
25 the conversion of his debt to equity.
26

1 155. Defendants Maresca, Giunta, Conrad and Kremin understood that Zaycon was
2 desperately in need of a capital infusion.

3 156. However, they feared that Great Hill's investment would change the power
4 structure in the Company.

5 157. In particular, Defendants Maresca, Giunta, Conrad and Kremin feared that with
6 Great Hill and Braddock being the largest investors in the Company, and with Braddock
7 exercising management control in his capacity as co-managing member and CEO, they would
8 no longer be able to control the Company.

9 158. Defendants Maresca, Giunta, Conrad and Kremin also recognized that
10 Braddock's conversion of his debt to Class A equity as required by Great Hill would increase
11 Braddock's voting power.
12

13
14 ***Conspiracy to Oust Braddock***

15 159. Accordingly, Defendants Maresca, Giunta, Conrad and Kremin commenced
16 looking for a way to oust Braddock but to maintain the interest of Great Hill.

17 160. To that end, Defendants Maresca, Giunta, Conrad and/or Kremin discussed with
18 Vertical and Shwartz whether Great Hill would complete the contemplated transaction even if
19 they fired Braddock.

20 161. Vertical and Shwartz had touted Braddock's skills and experience in order to
21 interest Great Hill in Zaycon in the first place.
22

23 162. In addition, Vertical and Shwartz knew or should have known that private equity
24 firms look for experience, leadership and "skin in the game" before committing significant
25 capital.
26

1 163. On the other hand, Shwarts and Vertical wanted to oust Braddock because
2 Shwarts understood that Braddock was losing confidence in Shwarts's ability to successfully
3 perform his duties as an investment banker for Zaycon.

4 164. Upon information and belief, in an attempt to oust Braddock and protect their
5 investment banking fees, and in the face of increasing division within the Company, Vertical
6 and Shwarts told Maresca, Giunta, Conrad and/or Kremin that they could close the Great Hill
7 deal without Braddock.

8 165. Several days later Shwarts went so far as to tell Defendants that Braddock was
9 not needed because Shwarts was prepared to assume the role of CEO of Zaycon
10

11 166. As a result, although it had been Braddock's leadership and money which had
12 put Zaycon on a trajectory to raise investment capital and to fulfill its potential in the first place,
13 Defendants Zaycon, Maresca, Giunta, Conrad and Kremin decided to immediately terminate
14 both Braddock's employment and his status as co-managing member of the Company.
15

16 167. Simultaneously, Defendants Zaycon, Maresca, Giunta, Conrad and Kremin
17 decided to delay providing Braddock with an accurate capitalization chart and the other
18 paperwork necessary for Braddock to implement the conversion of his debt to equity as had
19 been required by Great Hill and agreed to by the parties.
20

21 168. By this point in time all Defendants had agreed repeatedly that Braddock would
22 be given an accurate capitalization chart.

23 169. In addition, all Defendants had agreed that the Operating Agreement would be
24 amended to give voting rights to the holders of B units in the Company.

25 170. However, rather than honoring their commitments, Defendants responded
26

1 through Giunta and with the concurrence of Braddock's co-managing member Maresca to
2 Braddock's requests made days before his removal from management for the latest version of
3 the operating agreement and an accurate version of the capitalization chart by covering up the
4 fact that new versions of these documents had been completed and were available and by
5 sending Braddock prior versions of the documents.
6

7 171. As a result, Defendants failed to send Braddock and failed to implement an
8 agreed upon Fifth Amendment to the Second Amended and Restated Operating Agreement
9 which would have given voting rights to the holders of B units in the Company and thus
10 increased Braddock's voting power and decreased Defendants' voting power.

11 172. Likewise, Defendants failed to send Braddock and failed to implement an agreed
12 upon Third Amended Operating Agreement which would have given voting rights to the holders
13 of B units in the Company and thus increased Braddock's voting power and decreased
14 Defendants' voting power.
15

16 173. Defendants went so far as to withhold the draft of the Third Amended Operating
17 Agreement from Braddock.

18 174. In addition, Giunta, acting on behalf of all Defendants, provided Braddock with
19 capitalization charts which were manifestly inaccurate and out of date.
20

21 175. Among other things, the capitalization tables provided to Braddock failed to
22 include any provision for accrued interest on Braddock's loans to the Company.

23 176. In addition, although the most recent version of their capitalization chart reflected
24 the fact that Braddock owned over 20% of the Company on a fully diluted basis, Defendants
25 sent Braddock prior versions which failed to reveal the true extent of Braddock's ownership.
26

1 177. To remove Braddock as co-managing member under the Company's Operating
2 Agreement, Defendants Maresca, Giunta, Conrad and Kremin needed 80% of the eligible,
3 voting Class A Units to vote for Braddock's removal.

4 178. On or about April 19 and 20, 2016, Defendants Maresca, Giunta, Conrad and
5 Kremin prepared and signed a document denominated a Consent of Members (the "Consent")
6 resolving that Braddock was to be removed as a manager of Zaycon.

7 179. In addition, Defendants obtained the signatures of several other members of
8 Zaycon on the Consent.

9 180. On April 21, 2016, without any advance notice or warning of their intentions,
10 Defendants Maresca and Giunta informed Braddock that the holders of at least 80% of the Class
11 A membership units of Zaycon had voted to remove him as a manager, and that he was being
12 terminated as an employee.

13 181. Defendants' termination of Braddock's status as co-managing member and
14 termination of his employment as CEO was wrongful for several reasons.

15 182. As the largest single investor in and largest lender to the Company, Braddock
16 had the right to vote over 20% of the voting units of the Company. Doing so would have
17 prevented Braddock's termination as CEO and co-managing member.

18 183. Indeed, it was the manipulation of the capitalization structure and capitalization
19 chart of the Company by Defendants Maresca, Giunta, Conrad and Kremin that allowed these
20 Defendants to take the incorrect position that they had 80% of the Class A votes, which would
21 have been necessary to effectuate Braddock's removal as co-managing member.

22 184. The manipulation of the Zaycon capitalization structure by Defendants Maresca,
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1 Giunta, Conrad and Kremin included failing to properly record all of Braddock's membership
2 units in the Company's capitalization chart.

3 185. The manipulation of the Zaycon capitalization structure by Defendants Maresca,
4 Giunta, Conrad and Kremin also included issuing vast quantities of membership units to
5 individuals who had invested no money in the Company, including themselves, the fact of which
6 was concealed from Braddock. The issuance of over 3,000,000 Class A membership units to
7 Conrad and over 3,000,000 Class A membership units to Kremin and over 1,750,000 Class A
8 membership units to Maresca was for no cash consideration. In addition, and to the extent that
9 these issuances were for services allegedly performed, they were vastly disproportionate in
10 amount as compared to the 250,000 units of equity issued for services to Braddock in lieu of
11 salary in consideration of his employment as CEO.
12

13 186. Defendants manipulated the voting process that resulted in the execution of the
14 Consent by fraudulently inducing certain Zaycon members to vote for Braddock's removal,
15 thereby improperly purporting to obtain the 80% majority necessary to oust Braddock as a
16 co-managing member under the Operating Agreement.
17

18 187. Specifically, to get the signatures of other members of Zaycon on the Consent,
19 Defendants falsely and fraudulently told these other members that Braddock was opposed to the
20 deal with Great Hill and that he would kill it.
21

22 188. In the case of Zaycon member Nathan Brown, who owned 1,500,000 voting units
23 representing over 5% of the equity of Zaycon, Defendants Conrad and Giunta each called him
24 to urge him to vote for the removal of Braddock on the alleged grounds that Braddock would
25 sabotage the deal with Great Hill. In each instance, Brown withheld his consent. It was only
26

1 when he received a third call telling him that Braddock was opposed to the deal with Great Hill
2 – this one from Shwarts – that Brown concluded that the allegations against Braddock must be
3 true and that he agreed to sign the Consent.

4 189. Defendants further manipulated the voting process by conducting the purported
5 vote in secret without a meeting or even notice or any opportunity for a discussion during which
6 Braddock could have set the record straight and been heard by his fellow members before they
7 voted.
8

9 190. Defendants acted wrongfully by withholding information and documents from
10 Braddock which he needed in order to effectuate his already announced intended exercise of his
11 right to convert the debt owed to him into Class A voting equity, and to exercise his option to
12 buy additional Class A membership units. Braddock's conversion of his debt to Class A voting
13 equity as required by Great Hill and his purchase of additional Class A membership units would
14 have deprived Defendants of their purported 80% voting majority. Accordingly, by failing to
15 provide Braddock with an accurate capitalization chart and the other paperwork he required,
16 Defendants prevented Braddock from exercising his conversion rights and purchasing additional
17 Class A units in time to vote against, and thus prevent, his ouster as co-managing member.
18

19 191. In addition, a large portion of the units voted for the removal of Braddock were
20 held by an entity by the name of The Michael John Trust. The units owned by The Michael John
21 Trust were non-voting units. As a result, the votes by The Michael John Trust to remove
22 Braddock as manager were invalid.
23

24 192. Similarly, a portion of the units voted for the removal of Braddock were held by
25 certain additional investors associated with Giunta by the name of Solimeo (the "Solimeo
26

1 Investors”). The units owned by the Solimeo Investors were non-voting units. As a result, the
2 votes by these additional investors to remove Braddock as manager were invalid.

3 193. Likewise, a portion of the units voted for the removal of Braddock were held by
4 an entity by the name of The Saratoga Trust. Upon information and belief, the units owned by
5 the Saratoga Trust were non-voting units. As a result, the votes by The Saratoga Trust to remove
6 Braddock as manager were invalid.

7 194. At the time of Braddock’s removal the Michael John Trust owned over 30.62 %
8 of the Class A Units of the Company.

9 195. Without The Michal John Trust block of votes, and irrespective of the other
10 manipulations referenced above, the Defendants did not have anywhere close to the 80%
11 majority vote required by the Zaycon Operating Agreement to remove Braddock as a co-
12 managing member.

13 196. At the time of Braddock’s removal the Solimeo Investors owned over 3.7% of
14 the Class A Units of the Company.

15 197. Without the block of votes held by the Solimeo Investors, the Defendants did not
16 have the 80% majority vote required by the Zaycon Operating Agreement to remove Braddock
17 as a co-managing member.

18 198. At the time of Braddock’s removal the Saratoga Trust owned over 7.09% of the
19 Class A Units of the Company.

20 199. Without The Saratoga Trust block of votes, the Defendants did not have the 80%
21 majority vote required by the Zaycon Operating Agreement to remove Braddock as a co-
22 managing member.

1 200. As a result of the foregoing, the purported removal of Braddock as a co-managing
2 member of Zaycon was wrongful and of no force or effect and was null and void from the outset.

3 201. As a further result of the foregoing, Braddock's removal as CEO was wrongful
4 and of no force or effect.

5 202. As a further result of the foregoing, the actions taken by Zaycon's purported
6 management since the time of Braddock's wrongful removal have been *ultra vires*.

7 203. In short, after Braddock had put Zaycon on an impressive trajectory, Defendants
8 conspired to and did wrongfully remove him as co-managing member, which in turn purportedly
9 enabled the remaining managing member and the replacement managing member to terminate
10 his employment contract.

11 204. Defendants Maresca, Giunta, Conrad and Kremin did so in order to further their
12 own self-interest and to maintain control of the Company, despite the fact that it would have
13 been in the best interests of the Company to retain Braddock and to complete the Great Hill
14 transaction.

15 205. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that
16 Braddock had been bankrolling the Company for them.

17 206. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that their
18 own investments in the Company were smaller than Braddock's or non-existent.

19 207. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that they
20 had utilized Braddock's involvement and investment in Zaycon to elicit Great Hill's interest in
21 the first place.

22 208. Defendants Maresca, Giunta, Conrad and Kremin did so in the misguided belief
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1 that Great Hill would proceed with its investment even after Braddock had been removed from
2 management.

3 209. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that the
4 Company's interference with Braddock's conversion of his debt to equity prevented the
5 Company from being debt free as required by Great Hill.
6

7 210. Zaycon's April 21, 2016 letter to Braddock notifying him of the termination of
8 his employment and of his status as co-managing member stated that Giunta had been appointed
9 as a replacement manager.

10 211. On or about June 30, 2016 Giunta resigned as a co-manager. Giunta has admitted
11 during his deposition that when he left Zaycon the Company's cap table was not complete.
12

13 212. Maresca now runs the Company as its sole managing member, on a part time
14 basis.

15 213. Maresca now runs the Company without providing adequate disclosure to
16 Braddock.

17 214. After the removal of Braddock as a co-manager and the termination of his
18 employment contract as CEO, Great Hill declined to invest in Zaycon.

19 215. This left the Company starved for necessary capital to expand and grow and on
20 the verge of insolvency.
21

22 216. On or about June 27, 2016, Braddock brought a new private equity financing
23 proposal to the Company from a private equity firm by the name of Spring Lake Equity Partners
24 ("Spring Lake").

25 217. The Spring Lake Proposal contemplated the investment of \$7 million of
26

1 desperately needed fresh capital into Zaycon.

2 218. Defendants rejected the Spring Lake proposal out of hand.

3 219. In addition, although Spring Lake asked Defendants for a counter-proposal,
4 Defendants refused to provide one.

5 220. Defendants' actions have caused the Company to lose two excellent financing
6 opportunities, either of which could have provided the Company with the capital necessary to
7 allow it to grow and flourish.

9 221. Defendants' actions have deprived the Company of much needed capital and
10 experienced leadership.

11 222. Since the wrongful removal of Braddock as a co-manager and the wrongful
12 termination of his employment contract, Defendants have failed to apprise Braddock of
13 significant developments affecting both his interest in the Company and the Company itself.

14 223. Likewise, since the wrongful removal of Braddock as a co-manager and the
15 wrongful termination of his employment contract, Defendants have prevented or sought to
16 prevent Braddock from obtaining information and documents about Zaycon by interfering with
17 Braddock's attempts to obtain such information and documents from other Zaycon owners and
18 employees.

19 224. Braddock brings this action to recover damages for violations of the Securities
20 Exchange Act of 1934, Rule 10b-5 promulgated thereunder, Washington State securities laws,
21 common law fraud, negligence, breach of contract, breach of fiduciary duty, and aiding and
22 abetting breach of fiduciary duty in an amount to be established at trial in excess of \$6.5 million.

23 225. In addition, Braddock seeks a) declaratory relief stating that his removal as a
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1 managing member of the Company and his removal as CEO were wrongful and of no force or
 2 effect and that actions taken by Zaycon's purported management since that time have been *ultra*
 3 *vires*; b) declaratory relief stating that some or all of the Zaycon membership units issued to the
 4 individual defendants for no consideration are void; c) injunctive relief reinstating Braddock as
 5 a managing member of the Company and as CEO; and d) injunctive relief prohibiting the
 6 Company from taking any steps to recapitalize, merge or sell the Company until such time as
 7 Braddock has been reinstated as a managing member of the Company.

9 **VI. FIRST CLAIM**
 10 **(Violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5)**

11 226. Plaintiff repeats and realleges each and every allegation contained above as if
 12 fully set forth herein.

13 227. Zaycon, through its managers, employees, agents and/or members (a) employed
 14 devices, schemes and artifices to defraud; (b) made untrue statements of material fact and/or
 15 omitted to state material facts necessary to make their statements not misleading; and (c)
 16 engaged in acts, practices and a course of business which operated as a fraud and deceit upon
 17 Braddock.

18 228. Zaycon and the Individual Defendants directly and indirectly, by the use, means
 19 or instrumentalities of interstate commerce and/or the mails, engaged and participated in a
 20 continuous course of conduct involving materially false and misleading statements, to mislead
 21 and defraud Braddock.

22 229. Certain of these misrepresentations were fraudulently contained in the June 6,
 23 2014 Email.

24 230. Certain of these misrepresentations were fraudulently contained in the Operating
 25
 26

1 Agreement.

2 231. Certain of these misrepresentations were fraudulently made during the June and
3 July, 2014 Meetings.

4 232. In the June 6, 2014 Email and during the June and July, 2014 Meetings,
5 Defendants failed to disclose the pricing and valuation levels provided to Zaycon insiders,
6 failed to disclose the DFI proceedings against Conrad and Kremin and Conrad's bankruptcy,
7 and failed to disclose the fact that Conrad, Kremin and Maresca had been given their interests
8 in the Company for little or no consideration.

9 233. Each of Braddock's decisions to acquire Zaycon securities was made in reliance
10 on the misrepresentations and omissions by the Defendants.

11 234. The misrepresentations and omissions used to solicit or induce Braddock to
12 invest and/or loan money into and for Zaycon were respectively false and fraudulent, or operated
13 as a falsehood and a fraud on Braddock.

14 235. Braddock's agreements to invest in Zaycon and to loan money to Zaycon were
15 made in reliance on the fraudulent misrepresentations and omissions of the Defendants.

16 236. The fraudulent misrepresentations and omissions were material.

17 237. At the time Defendants made the above referenced fraudulent misrepresentations
18 and omissions Defendants knew that they were fraudulent.

19 238. Defendants made the fraudulent misrepresentations and omissions with the intent
20 to deceive Braddock.

21 239. Defendants made the fraudulent misrepresentations and omissions with intent to
22 induce Braddock to join Zaycon and to invest in Zaycon.

1 248. Zaycon was a seller of Zaycon securities to Braddock for purposes of RCW
2 21.20.010.

3 249. In connection with the sales of securities to Braddock and the purchase of
4 securities by Braddock in Zaycon, Zaycon through its managers, employees, agents and/or
5 members violated RCW 21.20.010 by directly or indirectly making untrue statements of material
6 fact and/or omitting to state material facts necessary in order to make the statements made, in
7 light of the circumstances under which they were made, not misleading, and by engaging in acts,
8 practices, or a course of business which operated as a fraud or deceit upon Braddock.
9

10 250. Certain of these misrepresentations were fraudulently contained in the June 6,
11 2014 Email.

12 251. Certain of these misrepresentations were fraudulently contained in the Operating
13 Agreement.
14

15 252. Certain of these misrepresentations were fraudulently made during the June and
16 July, 2014 Meetings.

17 253. In the June 6, 2014 Email and during the June and July, 2014 Meetings,
18 Defendants failed to disclose the pricing and valuation levels provided to Zaycon insiders,
19 failed to disclose the DFI proceedings against Conrad and Kremin and Conrad's bankruptcy,
20 and failed to disclose the fact that Conrad, Kremin and Maresca had been given their interests
21 in the Company for little or no consideration.
22

23 254. Defendants made these and the other misrepresentations alleged above.

24 255. Defendants made the omissions alleged above.

25 256. Defendants acted with intent to defraud Braddock.
26

1 257. Braddock did not know of the misrepresentations and omissions.

2 258. Defendants misrepresentations and omissions were material to the purchase of
3 Zaycon securities by Braddock.

4 259. Braddock reasonably relied on Defendants misrepresentations and omissions.

5 260. Braddock would not have purchased Zaycon securities but for Zaycon's
6 misrepresentations and omissions.

7 261. The Individual Defendants and each of them are jointly and severally liable as
8 sellers under the operation of RCW 21.20.430(1) in combination with RCW 21.20.010.

9 262. The Individual Defendants and each of them are jointly and severally liable as
10 control persons under RCW 21.20.430(3) in combination with RCW 21.20.010.

11 263. Braddock has suffered damages proximately caused by Defendants violations of
12 RCW 21.20.010 in an amount to be established at trial in excess of \$6,500,000.

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15 **VIII. THIRD CLAIM**
16 **(Fraud Claim Against All Defendants)**

17 264. Plaintiff repeats and realleges each and every allegation set forth above as if set
18 forth fully and length herein.

19 265. Defendants made written and oral misrepresentations and omissions to Braddock
20 in an effort to solicit Braddock's financial and managerial involvement in Zaycon.

21 266. Certain of these misrepresentations were fraudulently contained in the June 6,
22 2014 Email.

23 267. Certain of these misrepresentations were fraudulently contained in the Operating
24 Agreement.

25 268. Certain of these misrepresentations were fraudulently made during the June and
26

1 July, 2014 Meetings.

2 269. In the June 6, 2014 Email and during the June and July, 2014 Meetings,
3 Defendants failed to disclose the pricing and valuation levels provided to Zaycon insiders,
4 failed to disclose the DFI proceedings against Conrad and Kremin and Conrad's bankruptcy,
5 and failed to disclose the fact that Conrad, Kremin and Maresca had been given their interests
6 in the Company for little or no consideration.
7

8 270. Each of Braddock's decisions to acquire Zaycon securities was made in reliance
9 on the misrepresentations and omissions made by Defendants.

10 271. The misrepresentations and omissions used to solicit or induce Braddock to
11 invest and/or loan money into and for Zaycon made by Defendants were false.
12

13 272. Braddock would not have invested in Zaycon but for the misrepresentations and
14 omissions made by Defendants.

15 273. Braddock's agreements to invest in Zaycon and to loan money to Zaycon were
16 made in reliance on the fraudulent misrepresentations and omissions made by Defendants.

17 274. The fraudulent misrepresentations and omissions made by Defendants were
18 material.
19

20 275. At the time Defendants made the above referenced fraudulent misrepresentations
21 and omissions, Defendants knew that their misrepresentations and omissions were fraudulent.

22 276. Defendants made their fraudulent misrepresentations and omissions with the
23 intent to deceive Braddock.

24 277. Defendants made their fraudulent misrepresentations and omissions with intent
25 to induce Braddock to join Zaycon and to invest in Zaycon.
26

1 278. Defendants made their fraudulent misrepresentations and omissions with
2 reckless disregard for truth or falsity.

3 279. Braddock reasonably relied upon the fraudulent misrepresentations and
4 omissions made by Defendants to his detriment.

5 280. Each of the fraudulent misrepresentations and omissions made by Defendants
6 caused Braddock to sustain damages.

7 281. The wrongdoing of Defendants was intentional, wanton, outrageous, morally
8 culpable, and perpetrated with wrongful, reckless and malicious disregard for the rights of
9 Zaycon and its members, including Braddock.

10 282. As a direct and proximate result of Defendants' wrongful conduct, Braddock has
11 sustained damages in connection with his interest in Zaycon in an amount to be established at
12 trial in excess of \$6,500,000.

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15 **IX. FOURTH CLAIM**
16 **(Negligent Misrepresentation Against All Defendants)**

17 283. Plaintiff repeats and realleges each and every allegation set forth above as if set
18 forth fully and at length herein.

19 284. Defendants had a duty to provide Braddock with complete and accurate
20 information respecting Zaycon, including but not limited to information respecting its
21 capitalization, prospects, risks and ownership.

22 285. Defendants negligently supplied Braddock with false and misleading
23 information respecting Zaycon's capitalization, prospects, risks and ownership prior to each of
24 Braddock's investments and loans into Zaycon.

25 286. Braddock relied on the materially false and misleading statements and/or the
26

1 non-disclosure of material adverse facts by Defendants in making his investments in Zaycon
2 from August 2014 through January 2016.

3 287. Braddock's reliance on the materially false and misleading statements made by
4 Defendants and/or on their non-disclosure of material adverse facts was reasonable and justified.

5 288. The false and misleading information supplied and furnished by Defendants was
6 the proximate cause of the damages sustained by Braddock.

7 289. As a direct and proximate result of Defendants' wrongful conduct, Braddock has
8 sustained damages in connection with his interest in Zaycon in an amount to be established at
9 trial in excess of \$6,500,000.

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11 **X. FIFTH CLAIM**
12 **(Breach of Fiduciary Duty)**

13 290. Plaintiff repeats and realleges each and every allegation set forth above as if set
14 forth fully and at length herein.

15 291. Plaintiff asserts this claim against Defendants Maresca, Giunta and Conrad.

16 292. As managers and control persons of Zaycon, Maresca, Giunta and Conrad owed
17 fiduciary duties of loyalty, due care, good faith/fair dealing, candor and full disclosure of all
18 material facts to the Company and to its members and to Braddock in his capacity as a member
19 and as a co-managing Member of Zaycon.

20 293. Braddock reasonably and justifiably reposed his trust and confidence in Maresca,
21 Giunta and Conrad to properly perform their duties in connection with the Company and to deal
22 fairly and act with loyalty, due care and candor and in good faith and to provide full disclosure.

23 294. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
24 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by making
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26



1 fraudulent misrepresentations and omissions to Braddock.

2 295. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
3 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by repeatedly
4 misrepresenting that an accurate capitalization chart was in the process of being prepared and
5 would be provided to Braddock as soon as it was ready.
6

7 296. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
8 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by issuing Zaycon
9 units to one another and to Kremin for little or no consideration.

10 297. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
11 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by (i) conspiring to
12 terminate Braddock's employment contract and his status as co-managing Member of the
13 Company for their own self-interested reasons; (ii) manipulating the Zaycon capitalization
14 structure; (iii) manipulating the voting process that resulted in the execution of the Consent; (iv)
15 withholding information from Braddock which he needed in order to convert the debt owed to
16 him into Class A voting equity and to exercise his options to buy additional Class A membership
17 units; (v) failing to implement an agreed upon amendment to the Second Amended and Restated
18 Operating Agreement which would have given voting rights to the holders of B units in the
19 Company; (vi) failing to implement an agreed upon Third Amended Operating Agreement
20 which would have given voting rights to the holders of B units in the Company; and (vii)
21 withholding a draft of the Third Amended Operating Agreement from Braddock.
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24 298. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
25 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by withholding data
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1 from Braddock reflecting the fact that his ownership of the Company on a fully diluted basis
2 exceeded 20%.

3 299. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
4 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by removing
5 Braddock from his position as a managing member based upon the vote of less than the required
6 80% of the units entitled to vote in accordance with the Company's operating agreement by
7 counting non-voting units as if they were voting units, including but not limited to units owned
8 by a trust set up by the family of defendant Giunta.

10 300. Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,
11 good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by (i) allowing
12 Maresca to run the Company as its sole managing member in violation of Section 4.1 of the
13 Operating Agreement, which states that "[t]he Company shall be managed by two managers";
14 (ii) acting in their own self-interest and contrary to the best interests of Zaycon in an effort to
15 retain control of a company in which they had made little or no investment; (iii) sabotaging the
16 prospect of an investment by Great Hill by terminating Braddock's status as co-managing
17 member and as CEO and by interfering with the elimination of the Company's debt for their
18 own self-interested reasons only days after receiving the Great Hill proposal and
19 notwithstanding Great Hill's requirement that the Company be debt free at closing; (iv) refusing
20 even to negotiate with Spring Lake or otherwise to consider or make any effort to obtain an
21 equity investment from Spring Lake; (v) failing to apprise Braddock of significant developments
22 affecting both his interest in the Company and the Company itself; and (vi) preventing or
23 seeking to prevent Braddock from obtaining information and documents about Zaycon by
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1 interfering with Braddock's attempts to obtain such information and documents from other
2 Zaycon owners and employees.

3 301. Maresca, Giunta and Conrad have acted in bad faith and in a manner inconsistent
4 with their fiduciary duties.

5 302. The breaches of their fiduciary duties by Maresca, Giunta and Conrad have been
6 the proximate cause of Braddock's damages.

7 303. As a direct and proximate result of Defendants' wrongful conduct, Braddock has
8 sustained damages in connection with his interest in Zaycon in an amount to be established at
9 trial in excess of \$6,500,000.

10
11 **XI. SIXTH CLAIM**
12 **(Breach of Contract)**

13 304. Plaintiff repeats and realleges each and every allegation set forth above as if set
14 forth fully and at length herein.

15 305. Plaintiff asserts this claim against all Defendants.

16 306. At all times mentioned, Zaycon and its members operated the Company pursuant
17 to the Operating Agreement.

18 307. The Operating Agreement contained an implied covenant of good faith and fair
19 dealing.

20 308. Braddock's employment contract contained an implied covenant of good faith
21 and fair dealing.

22 309. Braddock has fulfilled and performed all the terms and conditions required of
23 him by the terms of the Operating Agreement and of his employment contract.

24 310. Braddock was a co-Managing Member of the Company.
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1 311. The Operating Agreement provided that a Managing Member was to serve until
2 his death, disability, resignation or removal by Members holding at least eighty percent (80%)
3 of the Class A Units.

4 312. Defendants breached the Operating Agreement by removing Braddock from his
5 position as a Managing Member based upon the vote of less than the required 80% of the units
6 entitled to vote in accordance with the Company's Operating Agreement by counting non-voting
7 units as if they were voting units.

8 313. Defendants breached the Operating Agreement by appointing Giunta as a
9 replacement Manager to fill a seat that was not vacant.

10 314. Defendants breached the Operating Agreement and Braddock's employment
11 contract by firing Braddock without the unanimous consent of the duly seated Managing
12 Members of the Company.

13 315. Defendants have breached the covenant of good faith and fair dealing contained
14 in Braddock's employment contract.

15 316. Defendants have breached the covenant of good faith and fair dealing contained
16 in the operating agreement.

17 317. As a result of the foregoing, Plaintiff Braddock is entitled to compensatory
18 damages from Defendants Zaycon, Maresca, Giunta, Conrad and Kremin in an amount to be
19 established at trial in excess of \$6,500,000.

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23 **XII. SEVENTH CLAIM**
24 **(Aiding and Abetting Breach of Fiduciary Duty)**

25 318. Plaintiff repeats and realleges each and every allegation set forth above as if set
26 forth fully and at length herein.

1 319. Plaintiff asserts this claim against Defendant Kremin.

2 320. Defendants Maresca, Giunta and Conrad breached their fiduciary duties to
3 Zaycon and Braddock.

4 321. Defendant Kremin participated in and aided and abetted in the making of
5 misrepresentations and omissions to Braddock.

6 322. Defendant Kremin participated in and aided and abetted in withholding
7 information from Braddock.

8 323. Defendant Kremin participated in and aided and abetted the ouster of Braddock
9 by advising and conspiring with Maresca, Giunta and Conrad to terminate Braddock's
10 employment and his status as co-managing member of the Company.

11 324. Defendant Kremin participated in and aided and abetted the manipulation of the
12 voting process that resulted in the execution of the Consent.

13 325. The actions of Kremin have caused Plaintiff Braddock to sustain damages.

14 326. As a result of the foregoing, Braddock is entitled to compensatory damages from
15 Kremin in an amount to be established at trial in excess of \$6,500,000.

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18 **XIII. EIGHTH CLAIM**
19 **(Declaratory Judgment)**

20 327. Plaintiff repeats and realleges each and every allegation set forth above as if set
21 forth fully and at length herein.

22 328. Defendants Maresca, Conrad, Giunta and Kremin awarded grossly
23 disproportionate numbers of Zaycon membership units to themselves and to friends and family
24 members for little or no consideration.

25 329. The issuance of Zaycon membership units to Maresca, Conrad and Kremin for
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1 little or no consideration is void.

2 330. The issuance of Zaycon membership units to friends and family members of
3 Maresca, Conrad, Giunta and Kremin for little or no consideration is void.

4 331. The purported termination of Braddock as manager and Chief Executive Officer,
5 without the required vote of at least 80% of the Class A unit holders was in violation of the
6 Zaycon Operating Agreement and is void; and any action by Zaycon management subsequent
7 to that time is *ultra vires* and void.

9 332. This claim raises a justiciable controversy, sufficiently definite and concrete to
10 warrant declaratory relief.

11 333. Braddock is entitled to a declaratory judgment that all or part of the Maresca,
12 Conrad and Kremin units in Zaycon are invalid.

13 334. Braddock is entitled to a declaratory judgment that all or part of the Zaycon
14 membership units awarded to friends and family members of Maresca, Conrad, Giunta and
15 Kremin for little or no consideration are invalid.

16 335. Braddock is entitled to a declaratory judgment that his termination as co-manager
17 and CEO was void because his termination as co-manager was the result of wrongful
18 manipulation and was not approved by at least 80% of the Zaycon Class A unit holders as
19 required by the Zaycon Operating Agreement.

20 336. Braddock is entitled to a declaratory judgment that any action taken by Zaycon
21 management subsequent to the void termination of Braddock as manager and CEO was *ultra*
22 *vires* and void.

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25 **XIV. NINTH CLAIM**
26 **(INJUNCTIVE RELEIF)**

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2 337. Plaintiff repeats and realleges each and every allegation set forth above as if set
3 forth fully and at length herein.

4 338. Braddock was wrongfully removed as co-manager and CEO of Zaycon.

5 339. Braddock is entitled to an injunction reinstating Braddock as co-manager and
6 CEO of Zaycon.

7 340. Braddock is entitled to an injunction preventing any action to recapitalize, merge
8 or sell Zaycon until such time as Braddock is reinstated as co-manager and CEO of Zaycon.

9 341. Braddock has no adequate remedy at law.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment as follows:

13 1. Awarding compensatory damages to Plaintiff Braddock in an amount to be
14 determined at trial in excess of \$6,500,000.

15 2. For a declaratory judgment that Braddock's termination as manager and CEO
16 was void and of no force or effect; that actions taken by Zaycon management subsequent to
17 Braddock's wrongful termination are *ultra vires* and void; and that some or all of the
18 membership units issued to Conrad, Maresca and Kremin and to friends and family members of
19 Maresca, Conrad, Giunta and Kremin for little or no consideration are void;

20 3. For an injunction reinstating Braddock as manager and CEO of Zaycon, and an
21 injunction preventing any action to recapitalize, merge or sell Zaycon until such time as
22 Braddock is reinstated as co-manager and CEO of the Company; and

23 4. Awarding such other and further relief as is just and proper, including
24 pre-judgment interest, costs and reasonable attorneys' fees pursuant to the Securities Act of
25 Washington.
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1
2 DATED this 2nd day of February, 2018.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 2nd day of February, 2018, I electronically served the foregoing document to counsel of record for Defendants at the email addresses described below:

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